



## STATE OF NEVADA

### BEFORE THE NEVADA COMMISSION ON ETHICS

In re **Public Employee**,  
Public Agency,  
State of Nevada,

Advisory Opinion No. 24-124A

\_\_\_\_\_  
Subject. /

### ABSTRACT OPINION

#### EXECUTIVE SUMMARY<sup>1</sup>

TOPIC: GIFTS AND LOANS

Public Employee requested this confidential advisory opinion from the Nevada Commission on Ethics (“Commission”) pursuant to NRS 281A.675, regarding the propriety of their conduct as it relates to the Ethics in Government Law (“Ethics Law”) set forth in NRS Chapter 281A. Public Employee requests an advisory opinion regarding whether they could have accepted the gift of a complimentary ticket to an event from Private Entity in their private role as a elected member of the Board of Directors (“Board”) for Non-Profit where the Private Entity has an application pending before their public employer, Public Agency.

After fully considering their request and analyzing the facts and circumstances as presented by Public Employee, the Commission advises Public Employee that their acceptance of an event ticket would have violated NRS 281A.400(1) and (2). Since the \$150 value of the ticket was not nominal and Private Entity has matters pending before Public Agency which Public Employee will assist in evaluating in their public position, acceptance of the ticket would have violated NRS 281A.400(1). Acceptance of the ticket would also have violated NRS 28A.400(2) because the event was not an educational event and would not assist Public Employee in the performance of their public duties and was therefore unwarranted.

The Commission now renders this abstract opinion. The facts in this matter were obtained from documentary evidence provided by Public Employee. Although a full written opinion was properly served, for confidentiality reasons, this abstract opinion redacts certain findings of fact that were affirmed as true by Public Employee, provides a summary of issues, and removes other identifying information to protect the confidentiality of Public Employee. Facts and circumstances that differ from those presented to and relied upon by the Commission may result in different findings and conclusions than those expressed in this opinion.

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<sup>1</sup> This executive summary constitutes no part of the opinion of the Commission. It has been prepared by Commission staff for the convenience of the reader.

## I. FINDINGS OF FACT

- A. Public Employee is an employee of Public Agency.
- B. Public Employee's job description with Public Agency includes stakeholder outreach activities, and specialized research and analysis in support of Hearings and Public Agency staff to support administrative decisions and orders.
- C. Public Agency does not have a gift or conflict of interest policy, but its employees are required to follow the State of Nevada Employee Handbook from the Department of Administration, Division of Human Resource Management, which provides:

There are very few limitations on your personal activities as a State employee. Some agencies have defined restrictions more exactly than others because of the nature of the agency's functions. Check with your employing agency for precise prohibitions.

In general, you are not permitted to engage in any employment, activity, or enterprise that conflicts with your duties as a State employee. The nature of these conflicts is determined by your agency's appointing authority and a copy of these restrictions will be made available to you. You are prohibited from accepting, from any other source, payment for duties you perform as part of your regular job assignment. You are expected to devote your full attention and efforts to your assigned tasks during your hours of State employment. (NAC 284.738-284.770)

- D. Public Employee also sits on the Board of Non-Profit.
- E. Nonprofit received a gift of tickets from nonprofit Private Entity for any of its interested Board members to attend Private Entity's event. The tickets were not given to Public Employee specifically. The value of individual tickets for the event was \$150.00.
- F. Private Entity has applications pending before Public Agency. Part of Public Employee's job duties may include evaluating those applications, although Public Employee does not have final decision-making authority over the applications.
- G. Public Employee did not accept the gift of a ticket from Private Entity but requested guidance from the Commission as to whether their acceptance of such tickets would violate the Ethics Law.

## II. RELEVANT STATUTES

### A. NRS 281A.020(1)—Duty to Avoid Conflicts of Interest

- 1. It is hereby declared to be the public policy of this State that:
  - (a) A public office is a public trust and shall be held for the sole benefit of the people.

(b) A public officer or employee must commit himself or herself to avoid conflicts between the private interests of the public officer or employee and those of the general public whom the public officer or employee serves.

#### **B. NRS 281A.400—Code of Ethical Standards**

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity, for the public officer or employee or any person to whom the public officer or employee has a commitment in a private capacity, which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.

2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest or any person to whom the public officer or employee has a commitment in a private capacity. As used in this subsection, "unwarranted" means without justification or adequate reason.

### **III. CONCLUSIONS OF LAW**

- A. Public Employee is a public employee as defined by NRS 281A.150.
- B. Pursuant to NRS 281A.675, the Commission has jurisdiction to render an advisory opinion in this matter.
- C. It would have been a violation of NRS 281A.400(1) if Public Employee had accepted the gift of a ticket to the Private Entity's event because the ticket is not nominal in value and Private Entity has matters pending before Public Agency which Public Employee will assist in evaluating in their public position.
- D. It would also have been a violation of NRS 281A.400(2) for Public Employee to accept the Private Entity's gift of a ticket to its event because the event was not an educational event and would not assist Public Employee in the performance of their public duties and was therefore unwarranted.
- E. The Commission considered the request for an advisory opinion, a list of proposed facts that were affirmed as true by Public Employee and publicly available information.
- F. For the purposes of the conclusions offered in this Opinion, the Commission's findings of fact are accepted as true. Facts and circumstances that differ from those presented to and relied upon by the Commission may result in different findings and conclusions than those expressed in this opinion.<sup>2</sup>

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<sup>2</sup> The Commission reserves its statutory authority should an ethics complaint be filed presenting contrary circumstances. See *In re Howard*, Comm'n Op. No. 01-36 (2002) (notwithstanding this advisory opinion, a member of the public is not precluded from bringing an ethics complaint); *In re Rock*, Comm'n Op. No. 94-53 (1995) (Commission reservation of right to review until time issue is raised).

- G. If in the future additional facts are obtained that relate to the application of the Ethics Law to their circumstances, Public Employee may return to the Commission for education and guidance on the application of the Ethics Law by filing a new advisory request.
- H. An advisory opinion does not protect a public officer or employee from an investigation or adjudication based on an ethics complaint submitted pursuant to NRS 281A.710(b)(2) regarding past conduct addressed in the advisory opinion.
- I. Pursuant to NAC 281A.352, a quorum of the Commission considered this matter by submission, without holding an advisory opinion hearing.<sup>3</sup>

Any Finding of Fact hereafter construed to constitute a Conclusion of Law, or any Conclusion of Law hereafter construed to constitute a Finding of Fact, is hereby adopted, and incorporated as such to the same extent as if originally so designated.

#### **IV. COMMISSION DECISION**

Nevada's Ethics Law mandates that public officers and employees hold their positions for the public benefit and must avoid conflicts of interest. NRS 281A.020. The Ethics Law is concerned with situations that create appearances of impropriety and conflicts of interest, as well as actual impropriety and conflicts, in promoting integrity in public service.

As a public employee, Public Employee must commit to avoid both actual and perceived conflicts between their private interests and those of the public that Public Employee serves. Whether there would be such conflicts between their public duties at Public Agency and their private interests must be considered in light of the provisions set forth in NRS Chapter 281A and as interpreted by applicable Commission precedent in similar circumstances.

When a public officer or employee is offered a gift, they must evaluate the circumstances surrounding the gift when determining whether acceptance is appropriate. Gifts to public officers and employees implicate NRS 281A.400(1) and (2) of the Code of Ethical Standards.

##### **A. NRS 281A.400(1)—Securing or Accepting a Gift**

NRS 281A.400(1) prohibits public officers and employees from seeking or accepting any gift or favor "which would tend improperly to influence a reasonable person in the public officer's position to depart from the faithful and impartial discharge of the public officer's . . . public duties." We advise Public Employee that the inquiry under this provision is not whether the public officer or employee believes that their decision-making would be improperly influenced, but whether a "reasonable person" in the public officer or employee's position would be so influenced.

In determining whether a specific gift would improperly influence a public officer or employee, the Commission considers the value of the gift at issue and the ability of the

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<sup>3</sup> The following Commissioners participated in this opinion: Chair Scherer, Vice Chair Wallin and Commissioners Langton, Moran, Olsen, Reynolds and Yen.

public officer or employee to be influenced by the gift in performing their public duties in relation to the gift giver and their interests.

The Commission has considered these issues in previous opinions. In *In re Incline Village General Improvement District*, Comm'n Op. No. 93-34 (1995), the Commission determined that the solicitation of items from local businesses for employee incentives would violate NRS 281A.400(1)<sup>4</sup>, finding:

Incline Village is a small community in which IVGID has exclusive control over necessary services needed by each business and resident of the village and in which individuals and businesses are more likely to know and be known by IVGID staff and trustees; and ... there is a questionable nexus between soliciting contributions from persons who rely on IVGID services in personal or business capacities and rewarding certain employees who provide such necessary services to those donors and to the community at large.

*Id.*, at p. 4. The Commission concluded that the “appreciation and potential feeling of indebtedness to the donor has the capability of being the basis for a reasonable person to depart from the faithful and impartial discharge of his public duties.” *Id.*

In *In re City of Reno*, Comm'n Op. No. 96-78 (1997), the Commission found that the gift of unlimited annual movie passes to City officers and employees by Century movie theaters would violate NRS 281A.400(1). The Commission determined that the significant financial benefit of the proposed gift coupled with the fact that City staff could “influence the destiny of Century Theaters’ projects” would tend to improperly influence a reasonable person in the City officers’ and employees’ positions to depart from the faithful and impartial discharge of their public duties as relates to Century Theaters. *Id.*

The Commission also found that the gift of a \$100 Coach purse and several lunches from a contract vendor to a Quality Control Officer who was responsible for managing many aspects of her public agency’s contracting needs and administration process constituted a violation of NRS 281A.400(1). *In re Lopez*, Comm'n Op. No. 15-73C (2016). The Commission held that a gift with a \$100 value is not nominal or a trinket, and that the contract vendor’s reasons for giving the gift were “irrelevant because a violation of NRS 281A.400(1) does not require a finding of improper motive or intent to influence a public employee or officer.” *Id.*

Applying these considerations to the event ticket offered to Public Employee by Private Entity, the Commission determines that it would have been a violation of NRS 281A.400(1) for Public Employee to accept the ticket from Private Entity. Private Entity has an application pending before Public Agency and it is likely to have additional applications before Public Agency in the future. Public Employee does not have decision-making authority over Private Entity’s applications, but their role as a public employee with Public Agency includes providing information that may be used by Public Agency in deciding Private Entity’s application and the arguments of any parties protesting the application.

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<sup>4</sup> *In re Incline Village General Improvement District*, Comm'n Op. No. 93-34 (1995) was decided prior to the renumbering of the statutes in NRS Chapter 281 and references NRS 281A.400(1) by its previous number, NRS 281A.481(1).



The event ticket in this matter has a value of \$150 and would therefore not be a nominal gift to Public Employee. See *In re Lopez*. When coupled with the pending application before Public Agency that Public Employee will be evaluating in their public position, the event ticket and the “appreciation and potential feeling of indebtedness to the donor has the capability of being the basis for a reasonable person to depart from the faithful and impartial discharge of his public duties.” *In re Incline Village General Improvement District*, at p. 4. The Commission therefore determines that Public Employee’s acceptance of Private Entity’s fundraiser ticket would have been a violation of NRS 281A.400(1).

### **B. NRS 281A.400(2)—Securing or Granting Unwarranted Advantages**

Under NRS 281A.400(2), a public officer or employee must not use their position in government “to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public office or employee” or anyone to whom the public officer or employee owes a commitment in a private capacity. Public Employee therefore must be mindful of whether a gift is intended to grant or secure unwarranted benefits for Public Employee or others. “Unwarranted” is defined in the statute as “without justification or adequate reason.” NRS 281A.400(2).

In determining whether a benefit or gift is “without justification or adequate reason”, the Commission will look to the policies, procedures, and purpose of the public agency that are applicable to the public officer or employee. See *In re Ralenkotter*, Comm’n Op. Nos. 18-061C/139C (2020), at p. 9.

Public Agency does not have a specific policy regarding its employees’ acceptance of gifts, only advising employees that they are not permitted to engage in activities that conflict with their public duties. Public Agency includes as a goal within its Strategic Plan to foster cooperative and productive relationships with local governing bodies and interest groups, which includes Private Entity, including attending relevant conferences and meetings. If Public Employee were to accept an invitation to a purely educational event put on by the Private Entity, attendance at such an event would be beneficial to Public Agency by supporting its goal to foster relationships with interested groups and a gift of attendance at such a purely educational event would not be “without justification or adequate reason”. See NRS 281A.400(2).

As Private Entity’s event was not a purely educational event and would not specifically assist Public Employee in the fulfillment of their public duties at Public Agency, the Commission finds that the gift of an event ticket from Private Entity to Public Employee would be “without justification or adequate reason”. Public Employee’s acceptance of the event ticket from Private Entity therefore would have been a violation of NRS 281A.400(2).

Even under circumstances where a gift has an educational component and/or is beneficial to the public, the Commission has determined there is a perceived *quid pro quo*. “Consequently, the Commission is careful to review requests for opinions regarding such invitations on the facts specific to the request to ensure the propriety” of the gift. *In re Public Employee*, Comm’n Opinion No. 11-36A (2012), at pgs. 4-6. The factors the Commission reviews in making such a determination: (1) the purpose of the event; (2) whether the event provides education or insight into current and future issues facing the public agency and assists in fulfillment of public duties; (3) whether the gift is merely a show of appreciation; (4) whether the gift would influence a public officer to depart from their public duties; and (5) whether the gift is warranted rather than unwarranted and does

not detract from maintaining appropriate industry relationships and avoids ethical concerns. *Id.*

Reviewing the circumstances presented by Public Employee, the Commission determines that these factors support its finding that Public Employee's acceptance of Private Entity's event ticket would provide the perception of a *quid pro quo* and result in a violation of NRS 281A.400(2). See *In re Public Officer*, Comm'n Opinion No. 11-36A (2012), at pgs. 4-6. Since the primary purpose of the event was not educational, Public Employee's attendance at the event would not have assisted Public Employee in the performance of their duties at Public Agency. The gift of the event tickets from Private Entity to Nonprofit's Board appears to have been primarily a show of appreciation by Private Entity, although the purpose of the gift may also have been to strengthen ties between Nonprofit and Private Entity. That purpose is unrelated to Public Agency or Public Employee's public duties, however. Lastly, as previously discussed, the gift of the event ticket was unwarranted because it was made "without justification or adequate reason".

Under the circumstances as presented by Public Employee, therefore, their acceptance of Private Entity's gift of a ticket to its event would have violated NRS 281A.400(1) and (2) and been an improper gift under the Ethics Law.

Dated this 15th day of November, 2024

NEVADA COMMISSION ON ETHICS

By: /s/ Scott Scherer  
Scott Scherer, Esq.  
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John T. Moran, III, Esq.  
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